

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SPENCER McCLAIN,

Plaintiff,

ORDER

13-cv-755-bbc

v.

STATE OF WISCONSIN, CATHY A. JESS,
EDWARD F. WALL, LARRY L. JENKINS,
MARK HEISE, MICHAEL BAENEN, P. ERICKSON,
BUD WALDRON, MICHAEL MOHR,
DEIRDRE MORGAN, CAPTAIN BRANDT and
GARY H. HAMBLIN,

Defendants.

Plaintiff Spencer McClain, a prisoner at the Green Bay Correctional Institution in Green Bay, Wisconsin, has submitted a proposed complaint. He asks for leave to proceed *in forma pauperis*. Because plaintiff is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether he can proceed with his complaint *in forma pauperis*, plaintiff will have to make an initial partial payment of the filing fee.¹

The initial partial payment is calculated by using the method established in 28 U.S.C. § 1915, that is, by figuring 20% of the greater of the average monthly balance or the average monthly deposits to the plaintiff's trust fund account statement. From the trust fund account statement plaintiff has submitted, I calculate his initial partial payment to be \$13.15. Also, he must pay the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If plaintiff does not have the money in his regular account to make the initial partial payment, he will have to arrange with prison authorities to pay some or all of the

¹ With the exception of habeas corpus proceedings, the fee for civil actions filed after May 1, 2013 is \$400 unless a litigant qualifies as indigent under the federal *in forma pauperis* statute, 28 U.S.C. § 1915(a), in which case the fee is \$350.

assessment from his release account. This does not mean that plaintiff is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount plaintiff must pay at this time is the \$13.15 initial partial payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to insure that they are aware that they should send plaintiff's initial partial payment to this court.

ORDER

IT IS ORDERED that plaintiff Spencer McClain is assessed \$13.15 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$13.15 on or before November 21, 2013. If, by November 21, 2013, plaintiff fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to plaintiff's filing his case at a later date.

Entered this 30th day of October, 2013.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge